UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

ROLAND COFFEE ROASTERS, INC.[1] Employer and TEAMSTERS LOCAL UNION NO. 769, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO[2] Petitioner	Case 18-RC-16643 (formerly 12-RC-8486)

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]

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1 The Employer's name appears as amended at the hearing.

2 The Petitioner's name appears as amended at the hearing.

3 The Employer, Roland Coffee Roasters, Inc., is a Florida corporation with an office and place of business in Miami, Florida, where it is engaged in the manufacture and distribution of coffee. During the last 12 months, a

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Petitioner seeks to represent a unit of employees that includes all mechanics, salespersons, warehouse employees, and merchandisers who sell and service Bustelo products and who are employed by the Employer in Miami, Florida; and excludes all office clerical employees, supervisors, managers, security guards, and all other employees. The Employer contends that, to be appropriate, the unit should include all employees in the petitioned-for job classifications, regardless of the brand of coffee they sell or service.

The Employer manufactures and distributes coffee from its facilities in Miami, Florida. Originally, the Employer operated only out of its 8080 N.W. 58th Street, Miami, Florida facility ("the 8080 facility"). On February 3, 2000, the Employer purchased some of the assets of Tetley, Ltd. ("Tetley"), a competitor in the industry. As part of this asset purchase, the Employer acquired the coffee operations of Tetley, which included its coffee brands and employees. One of the coffee brands acquired in the asset purchase is the Bustelo brand. The Employer also acquired Tetley's lease of a facility at 7970 N.W. 60th Street, Miami, Florida ("the 7970 facility"). Additionally, as a condition of the asset purchase, the Employer agreed not to alter the compensation and benefits of employees acquired by the Employer.

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representative period, the Employer sold and shipped goods valued in excess of $50,000 from its facility in Miami, Florida directly to customers outside the State of Florida.

The Employer currently maintains approximately 60 employees in the job classifications detailed in the proposed unit. The employees working in these classifications are responsible for selling and distributing the Employer's coffee and servicing related equipment for its customers. Approximately 21 of these employees were acquired through the asset purchase; Petitioner seeks to represent most of this group of approximately 21 employees. The Employer's other employees include various office clerical employees, production employees, supervisors and managers.

The Employer currently maintains two Miami, Florida facilities. The first is the Employer's 8080 facility; the second is the 7970 facility acquired in the asset purchase. The Employer plans to maintain the 7970 facility until the lease expires. It is building a new office facility, and when the lease expires on the 7970 facility, the Employer plans to move its entire office operation to the new building rather than renew the lease on the 7970 facility.

Additionally, the Employer maintains several brands of coffee for sale and distribution. The Employer owned some of these brands prior to the asset purchase, and acquired the other brands through this purchase. The largest brand acquired through the asset purchase was the Bustelo brand. The Employer intends to maintain the separate identity of each brand.

The employees share a common lunchroom in the Employer's 8080 facility, and the employees in each classification work the same hours. Both the former Tetley employees and the Employer's original employees are held to the same disciplinary and performance standards. Evaluations of employee performance will be conducted under the Employer's historic method and will be applied to each employee. Additionally, the Employer utilizes a seniority system for bidding on open positions. It appears that the former Tetley employees will be credited for their years of service at Tetley when the Employer computes seniority.

However, because of a contractual provision in the asset purchase agreement, the Employer is required to maintain the compensation and benefits of the former Tetley employees for one year. Accordingly, the wages, commissions, and benefits paid to the Tetley employees are different than the wages, commissions, and benefits paid to the Employer's original employees. The former Tetley employees are currently being paid less, but they receive a better benefit package than the Employer's original employees. When the one-year contractual provision expires, the Employer intends to equalize the wages and benefits for all employees.

The Employer currently employs approximately 22 mechanics (also known as servicemen). Nine of these mechanics worked for Tetley prior to the asset purchase. It appears that, as of the date of the hearing, some of these employees continued to work at the 7970 facility. However, the Employer was in the process of transferring all of the mechanics to the Employer's 8080 facility. Additionally, the mechanics are not assigned to service equipment for the customers of any specific coffee brand. Rather, they work on any piece of equipment that requires maintenance, regardless of the brand of coffee the customer purchases. Although four mechanics currently service Bustelo customers exclusively, this practice will be discontinued as the Employer completes the merger process.

The mechanics are not required to wear any specific uniform, other than clean clothes. Furthermore, as they do not service customers of any specific brand, the mechanics do not wear insignias identifying themselves with any specific brand. Angel Souto is the manager of the service department, and there is a layer of supervisors underneath him. The mechanics report to these supervisors. The four mechanics who currently service Bustelo customers exclusively report to a single supervisor. However, this practice will be eliminated when the mechanics are fully integrated. Finally, the former Bustelo mechanics and the Employer's original mechanics

are paid on a comparable level, although each group's fringe benefits differ. Although it appears that neither Tetley nor the Employer maintained a set wage scale for the mechanics, the method each company used to determine wages, which is based on experience and skill, is comparable. Furthermore, it appears the Employer intends to continue its method for all mechanics once the year set out in its purchase agreement expires.

Petitioner seeks to represent only four of the 22 mechanics. It arrived at this number by contending it wishes to represent only those mechanics servicing Bustelo customers. The Employer maintains that all mechanics must be in the same unit.

The Employer also employs approximately 25 warehouse employees, all of whom work out of the Employer's 8080 facility. Of these employees, 13 of them are responsible for roasting, grinding, and packaging the coffee. It appears they also perform some warehouse maintenance tasks as well. Petitioner does not seek to include these 13 employees in the unit, and the Employer does not contend that they should be included either.

In addition, there are 12 other employees in the warehouse. These 12 employees are responsible for cleaning the warehouse, moving the products around the warehouse, loading and unloading trucks, and other general duties. It appears the Employer has assigned only five employees to load and unload trucks for about three to four hours each day. These five employees know where the drivers prefer to have the products arranged in their trucks. During the remainder of their working time, these five employees perform the exact same work as the other seven general warehouse employees. Two of these five employees are former Tetley employees, and three are the Employer's original employees. However, the record does not show that these five employees handle any specific brand of coffee exclusively. Rather, they load and unload any coffee brand. Furthermore, if one of these five employees is absent or busy

with another task, one of the other 12 general warehouse employees will fill in. All of the 25 warehouse employees are supervised by the plant manager.

Of the five warehouse employees who load and unload trucks, Petitioner seeks to represent only the employees who load and unload Bustelo coffee.[4] On the other hand, the Employer maintains that all 12 warehouse employees must be in the unit.

There are currently three merchandisers working for the Employer. One of these merchandisers is a former Tetley employee, and Petitioner contends that only the Tetley merchandiser should be included in the unit. The other two merchandisers are original employees of the Employer, and the Employer contends they also must be in the unit. The merchandisers are responsible for traveling to stores, cleaning the stores' shelves, and placing the Employer's products on the shelves. As a result of the provision in the asset purchase agreement, the merchandiser that formerly worked at Tetley is paid less than the Employer's original merchandisers. It appears the Employer is in the process of creating a merchandizing department. This department will consist of the three current merchandisers, the merchandisers the Employer apparently intends to hire in the future, and a supervisor. The merchandisers each work the same hours and adhere to the same dress code—a shirt and tie. Each merchandiser sells only one major brand of coffee, although it appears they sell minor brands as well. Because the Employer's major brands compete against each other, it is important to the Employer to maintain each brand's individual identity. To preserve this brand identity, the Employer has its merchandisers sell only one major brand.

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[4] The record does not contain any evidence regarding which warehouse employees load and unload Bustelo brand coffee. Rather, the evidence demonstrates that the five employees who load and unload the trucks are not assigned to any specific brand of coffee.

The Employer also employs approximately 22 salespersons. Approximately seven of these employees formerly worked for Tetley; the remaining salespersons are original employees of the Employer. Thus, Petitioner seeks to include in the unit the seven salespersons previously employed by Tetley, while the Employer contends that all salespersons must be in the unit.

Each salesperson is assigned to a specific route. The salespersons are responsible for selling and distributing the Employer's products to customers on that route. Each morning, they take trucks from the Employer's 8080 facility. From there, the salespersons follow their pre-determined routes, stopping at customer locations to sell coffee. At the end of the day, the salespersons report to the Employer's 8080 facility to return their trucks. The Employer's original salespersons, but not the former Tetley salespersons, then report to the office at the 8080 facility to complete their paperwork and other record-keeping activities. However, the former Tetley salespersons report to the 7970 facility to complete their sales records. Prior to the asset purchase, Tetley acquired a computer system to aid the salespersons. This system allowed the Tetley salespersons to use hand-held computers while they are on their routes. When they returned to the office, the system apparently allowed them to download the information in the hand-held computers to Tetley's computer system. Since the asset purchase, the former Tetley salespersons have continued to use the hand-held computers. However, since the Employer lacks sufficient space in its 8080 facility, the Employer requires the former Tetley salespersons to report to the 7970 facility. The Employer contends that once it completes the construction on its new office facility, all of the salespersons will report to the new office facility at the end of the day. The record does not reflect whether the Employer will acquire new hand-held computers for all salespersons.

As with the merchandisers, the salespersons typically only sell one major brand of coffee to preserve the individual identity of each brand. Because of the provision in the asset purchase agreement, the Employer's original salespersons earn more than the former Tetley employees, and, of course, the fringe benefits for the two groups differ. The Employer is attempting to develop a method for the Tetley salespersons to earn wages and commissions comparable to the wages and commissions of its original employees. Furthermore, the Employer intends to increase the pay for the former Tetley employees upon the expiration of the one-year provision in the contract.

Analysis and Conclusion

Based on the foregoing, and the record as a whole, I conclude that the appropriate unit should include all of the employees in the classifications sought by Petitioner, rather than just a group of employees limited to those that Petitioner believes are identified with one brand of coffee. In reaching this conclusion, I rely particularly on the Board's admonition that it will not approve fractured units; that is, combinations of employees that have no rational basis. Seaboard Marine, Ltd., 327 NLRB No. 108 (1999). In this matter, Petitioner seeks to include some, but not all, of the mechanics, salespersons, merchandisers and warehouse employees employed by the Employer at its facilities in Miami, Florida. By seeking such a unit, Petitioner recognizes that there is a community of interest among employees in the job classifications detailed in its petition, as amended. However, a unit that is limited to the employees who sell and service Bustelo products, as sought by Petitioner, is not appropriate for purposes of collective bargaining.

Petitioner has, without any explanation, included in its proposed unit only the employees who sell and service Bustelo brand coffee and equipment. By limiting its proposed unit to only

these employees, Petitioner ignores the functional integration of the Employer's employees. The mechanics and the warehouse employees work side by side, and they are interchangeable. The mechanics work on whatever equipment requires maintenance, regardless of whether it is a Bustelo product or not. Their uniforms do not distinguish them as Bustelo employees or the Employer's other employees, and they have common supervisors. Although four mechanics are currently working exclusively on Bustelo products, they are doing so in an effort to limit problems with the merger. Furthermore, the work assignments of these four mechanics are not permanent. They will be integrated with the remainder of the mechanics as time progresses.

Similarly, the warehouse employees all work side by side in the Employer's 8080 facility.[5] The former Tetley employees moved to the Employer's 8080 facility almost immediately after the asset purchase. The warehouse employees' job duties have no correlation to any particular brand of coffee. They work the same hours and wear the same uniform, which consists only of a T-shirt with a coffee brand logo on it. The warehouse employees are allowed to pick which logo they will wear on any given day. More importantly, there is simply no evidence that the warehouse employees are assigned to work on any particular brand of coffee. Finally, all warehouse employees are supervised by the plant manager.

The irrational nature of Petitioner's proposed unit is also demonstrated by its desire to include only a small subset of the warehouse employees. Not only does Petitioner seek to represent only the warehouse employees who handle Bustelo products, but it narrows this group

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[5] As noted, the term "warehouse employees" was not clearly defined at the hearing of this matter. There appear to be two classifications of employees who work in the warehouse. First, there are the production employees who roast, grind, and package the coffee. Second, there are the employees who clean the warehouse and move products around in the warehouse. This latter group includes the employees who load and unload the trucks. For purposes of this Decision and Direction of Election, the term "warehouse employees" describes the employees who clean the warehouse and move products around in the warehouse. The employees who roast, grind, and package the coffee are referred to as "production employees."

to only warehouse employees who load and unload the trucks. The record shows that while only about five warehouse employees regularly load and unload trucks, these five employees spend less than half of their days loading and unloading. They spend the remainder of their work time performing the same tasks as the other warehouse employees. Furthermore, it appears as though the other warehouse employees fill in for the loaders on a regular basis. Accordingly, there is no rational basis to distinguish the warehouse employees who load the trucks from the other warehouse employees.

Although the merchandisers and salespersons are, to some degree, assigned to work with a specific brand of coffee, such an assignment is solely for marketing purposes. To preserve brand identity, the Employer decided to have its merchandisers and salespersons sell only one of its two major brands. However, it appears that the Employer's minor brands are sold by all of the merchandisers and salespersons. Furthermore, the merchandisers and salespersons who sell Bustelo brand coffee perform the same job as the Employer's other merchandisers and salespersons.

Additionally, the fact that the former Tetley merchandiser continues to work out of the 7970 facility is of no consequence. The record demonstrates that the Employer lacks space in its 8080 facility, and it will move this merchandiser to its new office facility when construction is completed. Furthermore, the merchandisers are supervised by one individual, regardless of the brand of coffee they sell.

Similarly, the fact that the former Tetley salespersons must complete the paperwork at the 7970 facility is of no consequence. The record shows that, because of the computerized record-keeping system utilized by Tetley, the salespersons continue to report to the 7970 facility at the end of each day. When construction of the new office facility is completed, all of the

Employer's salespersons will report to that facility to complete their records for the day. Moreover, as they pick up and drop off their trucks at the Employer's 8080 facility each day, all the salespersons actually work out of this location.

My conclusion that Petitioner has provided no rational basis for the combination of employees it seeks to represent is further supported by the fact that the only differences between the employees who sell and service Bustelo coffee and the employees who sell and service other brands of coffee are their wages, commission rates, and benefits. However, this distinction is artificial; pursuant to the asset purchase agreement, the Employer may not alter the compensation or benefits received by former Tetley employees until February 3, 2001. Furthermore, this distinction is not based on whether the employees sell or service Bustelo brand coffee. Rather, it is based on the employees' prior employment with Tetley. I will not compound the temporary, artificial distinction by ordering an election limited to employees who work with Bustelo brand products.

Based on the evidence in the record, I find that the unit as described by the petition, and amended at the hearing, is inappropriate for purposes of collective bargaining. Because of the functional integration between the employees that sell, distribute, and service Bustelo brand coffee and the employees that sell, distribute, and service the Employer's other brands, I find that any appropriate bargaining unit must include all such employees.

6. The following employees of the Employer constitute a unit appropriate[6] for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

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[6] Although the unit found appropriate herein is broader in scope than that sought by Petitioner, I shall not dismiss the petition inasmuch as Petitioner has not disclaimed interest in the broader unit. In these circumstances, in accord with established Board policy, I shall direct an election in the appropriate unit conditioned upon the demonstration by Petitioner within fourteen (14) days from the issuance hereof that it has made an adequate showing of interest in the broader unit. In the event Petitioner does not wish to participate in the election in the unit found appropriate herein, I shall permit it to withdraw without prejudice upon notice to the Regional

All full-time and regular part-time sales and service employees, including mechanics, salespersons, warehouse employees engaged in loading and unloading trucks, moving products in the warehouse and general cleaning of the warehouse, and merchandisers at the Employer's Miami, Florida facilities; excluding office clerical employees, production employees, guards and supervisors as defined in the Act, as amended.

DIRECTION OF ELECTION[7]

An election by secret ballot will be conducted by the Regional Director for Region 12 among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees

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Director for Region 12 within fourteen (14) days from the date of issuance of this Decision or, if applicable, from the date the Board denies any request for review of the unit-scope findings in this Decision. Independent Linen Service Company of Mississippi, 122 NLRB 1002, 1005 (1959).

[7] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **May 2, 2000**.

engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[8]

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Teamsters Local Union No. 769, affiliated with the International Brotherhood of Teamsters, AFL-CIO.

Signed at Minneapolis, Minnesota, this 18th day of April, 2000.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board

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[8] To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 12 within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Tampa Regional Office, South Trust Plaza – Suite 530, 201 East Kennedy Boulevard, Tampa, FL 33602-5824, on or before **April 25, 2000**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.